

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KENNETH TAYLOR §

V. § Civil Action NO. 4:21-CV-02161

BRYAN COLLIER et al., §

PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND
MEMORANDUM IN SUPPORT OF

United States Courts
Southern District of Texas
FILED
JAN 10 2022
Rehan Ochsner, Clerk of Court

TO THE HONORABLE JUDGE OF THE SAID COURT:
NOW COMES, Kenneth Taylor, Prose plaintiff and makes this
motion for summary judgment and memorandum in support
pursuant to Rule 56 of the Fed. R. Civil Pro.

I

PRO SE LITIGATION RULE

Pleadings of a Pro Se Complaint should be held to
less stringent standards, than formal pleadings drafted by
lawyers. Court must construe Pro Se pleadings and argu-
ments liberally in light of the party's lay status, but
zealously guard their *raison d'être* as neutral and
unbiased arbiter. KING V. LIFE SCHOOL, 809 F. Supp. 2d 577
(N.D. Texas 2011); and SHAW V. BISCO, 541 F.2d 489 (5th Cir.
1976, 97 S.Ct 1556 (1977)).



II

BACKGROUND OF ACTION


The Plaintiff is a disabled person as defined by A.D.A.; A.D.A.A.A.; and R.A. Plaintiff filed Suit on July 01, 2021. The Court Ordered defendants to Answer on October 15, 2021. The defendants filed a motion for Extension of time. The defendants made an answer to the court on December 13, 2021. Plaintiff was not served his copy until December 30, 2021. The Plaintiff made a prompt response and objection, and placed it in the prison mail system on Monday January 03, 2021.

III

STATEMENT OF FACTS

The plaintiff is a disabled person as defined by: ADA; ADAAA; and RA. The Plaintiff has supplied the Court and defendants with Medical records and supporting law in his filing, see <Document 4, plaintiffs Memorandum of law in support of his 42 U.S.C. 1983>

The defendants have openly stated to this Court in a suit the plaintiff was part of filed in 2019 that: "IDCT is committed to housing all 12,000 offenders with Heat Sensitivity Score in Air-Conditioned housing by 2021. These measures are appropriate within the correctional context and effective to reasonably accommodate the name plaintiffs," and "A more appropriate tailored remedy would be to accommodate the plaintiffs specifically rather than the entire Jester III unit." See, CAVITT, et al V. DAVIS et al,

Civil action Number 4:19-cv-02881, < defendants Motion  to dismiss and Summary Judgment, dated 10, 2020 Pages 38 & 39 >

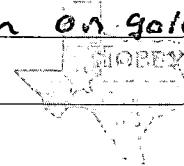
Plaintiff repeatedly requested to "ALL" the defendants reasonable accommodations for his Medical Condition/disabilities, but was refused. On April 18, 2021 Plaintiff filed his third Grievance addressing Heat issues and A/C housing. The defendants stated as follows: "Your grievance was investigated and closed you are housed appropriately Per SCC. There is not an A/C bed to accommodate the inmates medical needs at this time. Heat Score review 03/05/21. No further action warranted. Plaintiff filed his 3rd Step 2 on June 1, 2021

The Plaintiff filed suit on July 01, 2021. Just five days after filing suit, July 06, 2021 defendants moved Plaintiff to the LeBlanc, unit in Beaumont, Texas, <an Air-condition unit>

The Plaintiff was again moved on December 07, 2021, back to the Jester III unit, and is not housed in Air-conditioned housing.

Please take Note: The Plaintiff exhausted his administrative remedies pursuant to 42 U.S.C. § 1997 (a). See < Document 4 Pages 20-27 Copies of Grievance # 2019168107, Step 1 & 2; # 2019177588, Step 1 & 2.

This, and has been an on going never ending issue with The defendants and should be classified as an on going Continuous Tort.



IV

STANDARD OF REVIEW

Summary Judgment is appropriate when the record reflects that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c)

The moving party bears the initial burden of showing that there is no genuine issue for trial; it may do so by pointing out "the absence of evidence supporting the non moving party's case," DUFFY V LEADING EDGE PRODUCTS INC., 44 F3d 308 (5th Cir. 1995); and SKOTAK V. TENNECO RESIN. INC., 535 F2d 909, 913 (5th Cir.)

If the moving party meets this burden, the nonmoving party who will have the burden of proof at trial must come forward with summary judgment evidence establishing the existence of a genuine issue; that evidence must be such that if introduced at trial it would suffice to prevent a direct verdict against nonmoving party. CELOTEX CORP. V. CALRETT, 477 U.S. 317, 321, 105 S.Ct. 2548, 2552 (1986)

V

ARGUMENTS

The "ONLY" issue of material fact in this case is whether Plaintiffs' medical condition / disabilities require him to be in Air-Condition housing.

The defendants previously admitted that Plaintiffs' medical condition / disabilities require him to be housed in Air-Conditioning. This admission is found in the defendants Motion for Summary Judgment and Sworn to under Oath.

"TDCJ is committed to housing all 12,000 offenders with heat sensitivity score in air-condition housing by 2021. These measures are effective to reasonably accommodate the named Plaintiffs," and "A more appropriate tailored remedy would be to accommodate the plaintiffs specifically, rather than the entire Jester III unit." see RAYMOND L. CAVITT et al. v. LORIE DAVIS, ET al., Civil Action No. 4:19-cv-02881, <defendants Motion to dismiss and Summary Judgment, Pages 38 and 39, dated February 10, 2020>

It has been well established that under 28 U.S.C. § 1746 that Sworn testimony is competent Summary Judgment evidence. The above Motion Quot is a Sworn pleading under oath to this Court, and valid evidence. See HART V. HAIRSTAN 343 F3d 762 (5th Cir.); and NISSHO-IWAI AMERICAN CORP. V. KLINE, 845 F2d 1300, 1306 (5th Cir. 1998)

The Plaintiff has repeatedly requested accommodations in air-conditioned housing for his medical condition/disabilities and had been refused. The Plaintiff filed "additional" grievances on April 18, 2021. The response leaves no room for error on this issue. The response on Step 1 is as follows: "Your grievance was investigated and disclosed you are housed appropriately per SCC. There is not an A/C bed to accommodate the inmates' medical needs at this time. Heat score reviewed 03/05/21. No further action warranted."

The Plaintiff filed his "3rd" Step 2 on June 1, 2021. The response on that grievance is as follows: "An investigation was conducted into your concern. Administration is aware and records reveal you were reassigned to the LeBlanc unit

On 7/6/21; therefore, your request has been resolved. No further action is warranted."

As a result of the filing of this suit and the before mention grievances the plaintiff was moved to LeBlanc. But the Plaintiff was moved back to Jester III on December 07, 2021 and no longer housed in A/C housing.

The plaintiffs STEP 1 & 2 GRIEVANCES are official TDCJ documents. TDCJ is a Texas STATE Department, thus making them Governmental documents.

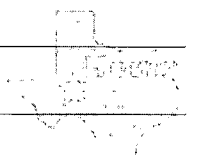
Under Texas state law these documents are Judicial admissions. See 742 S.W.2d 512, 513 (APP-1988). "The Black's LAW DICTIONARY" defines a Judicial admission as follows: "A formal waiver of proof that relieves an opposing party from having to prove the admitted fact and bars the party who made the admission from disputing it."

The defendants own admissions, show that the only genuine Material fact in this case is true. The plaintiffs medical conditions/disabilities require Air-condition housing. Therefore plaintiff is entitled to Summary Judgment as a matter of law.

VI

CRIMINAL IMPLICATIONS

For the defendant to deny, withdraw, or dispute the above admissions is a criminal offence in Federal and state court and punishable by imprisonment.



VII

ON GOING CONTINUOUS TORT

The plaintiff states that for the sole purpose of Statute of limitations, Now brings to the court the concept of "Continuance Tort".

Texas has long recognized this concept, in which tortious behavior is repeated, or continues for a time, see ADLER V. BEVERLY HILLS HOSP. 594 S.W.2d 135; and PET V. METCLIFF, 8 F3d 214, 218 (5th Cir. 1993, citing Adler)

The plaintiff has and is within the Statute of limitations as provide within the laws and statutes of the United States and the State of Texas. But the Plaintiff would like to ~~XXXXXX~~ Preserve the record as far back as 2014 when he was first hospitalized for his medical condition/disabilities and for which the defendant KADEW.

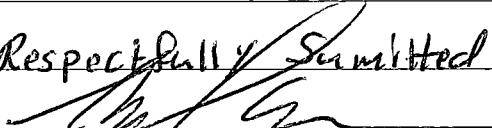
VIII

CONCLUSION

In Conclusion the plaintiff has shown this court that he is a disabled person as defined by A.D.A.; A.D.A. A.A.; and R.A.. The plaintiff has also shown this court that the defendants have admitted to such and refused to place him into Air-Condition housing until he filed Suit on July of 2021. At the present time he is not housed in air-conditioned housing. Furthermore each day he has not been in air-conditioned housing and continues not to be he suffers unreparable harm. This being the case he is entitled to Summary Judgment by law.

IX
PRAYER

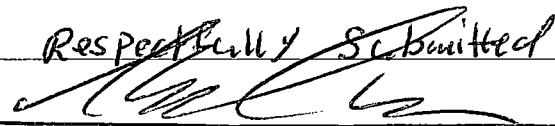
The Plaintiff prays this Honorable Court grant the Plaintiff Motion for Summary Judgment.

Respectfully Submitted

Kenneth Taylor Pro Se Plaintiff

X
DECLARATION

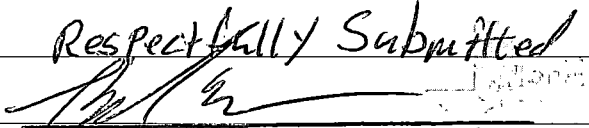
I, Kenneth Taylor, TDCJ No. 828757, being presently incarcerated at the Jester III Unit, swear and Declare under the Penalty of perjury this Motion for Summary Judgment and Memorandum in support is True and correct to the best of my knowledge.

Executed this 6th day of January 2022

Respectfully Submitted

Kenneth Taylor Pro Se Plaintiff
TDCJ # 828757

XI
CERTIFICATE OF
SERVICE

I, Kenneth Taylor, hereby certify a true & correct Carbon copy of this document was sent by U.S. Mail to Jeanine M. Coggeshall, at P.O. Box 12548, Austin, Texas 78711

Respectfully Submitted

Pro Se Plaintiff



Texas Department of Criminal Justice

STEP 2**OFFENDER
GRIEVANCE FORM**Offender Name: Kenneth Taylor TDCJ# 828757Unit: Jester III Housing Assignment: 1-11Unit where incident occurred: Jester III**OFFICE USE ONLY**Grievance #: 2021099743UGI Recd Date: JUN 03 2021HQ Recd Date: JUN 04 2021Date Due: 7-13-21Grievance Code: 200 598Investigator ID#: 11312 12823Extension Date: AUG 22 2021

You must attach the completed Step 1 Grievance that has been accepted. You may not appeal to Step 2 with a Step 1 that has been:

he Warden for your Step 2 appeal to be processed.

Give reason for appeal (Be Specific). I am dissatisfied with the response at Step 1 because...

The response on Step 1 Grievance # 2021099743 dated 5/25/21 was in violation of Federal Law, my medical/disability needs, and the statements you made to the UNITED STATES DISTRICT COURT. Under A.D.A. I'm classified as an disabled person with special medical needs, in the form of "AIR-CONDITION HOUSING". In your response on step 1 at the unit level, they stated: "There is not an A/C bed to accommodate the inmates medical needs at this time." Not only is this in direct conflict with your sworn pleadings to the court, it's also INTENTIONAL DISCRIMINATION OF A DISABLED PERSON, under Title II of THE AMERICANS WITH DISABILITIES ACT; LIGHTBOURN V. COUNTY OF EL PASO TEX. 118 F3d 421, 428 (5th Cir. 1997); and UNITED STATES V. GEORGIA 546 U.S. 151 at 157, 126 S.Ct. 877 at 881-882.

Therefore your intentional denial to accommodate my medical and disability needs, not only opens the door for more legal action, but damages for your knowingly and intentionally doing so and giving a written statement of such on the step 1 grievance.

I fully intend to file suit in court if this issue can not be resolved within the next 40 days. This is the time you have to make a response to this Step 2 Grievance.

Please take note: Just like the step 1 I'm sending copies of this to the same people listed on the step 1 with letters addressing the

legal issues to each person on the role they may play in any
up-coming legal action.

C.L. file

C.L. all listed on step 1

C.L. U.S. District Court to be filed as evidence in up-coming legal action.

Offender Signature: [Signature]

Date: June 1, 2021

Grievance Response:

An investigation was conducted into your concern. Administration is aware and records reveal you were reassigned to the LeBlanc unit on 7/6/21; therefore, your request has been resolved. No further action is warranted.

Signature Authority: J. Back

Date: SEP 17 2021

Returned because: **Resubmit this form when corrections are made.*

- ☐ 1. Grievable time period has expired.
- ☐ 2. Illegible/Incomprehensible.*
- ☐ 3. Originals not submitted. *
- ☐ 4. Inappropriate/Excessive attachments.*
- ☐ 5. Malicious use of vulgar, indecent, or physically threatening language.
- ☐ 6. Inappropriate.*

CGO Staff Signature: _____

OFFICE USE ONLY

Initial Submission CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) ☐ Screened ☐ Improperly Submitted

Comments: _____

Date Returned to Offender: _____

2nd Submission CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) ☐ Screened ☐ Improperly Submitted

Comments: _____

Date Returned to Offender: _____

3rd Submission CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) ☐ Screened ☐ Improperly Submitted

Comments: _____

Date Returned to Offender: _____



Texas Department of Criminal Justice

STEP 1

OFFENDER
GRIEVANCE FORM

OFFICE USE ONLY

Grievance #: 2021099743

Date Received: 4-22-21

Date Due: 6-1-21

Grievance Code: 200/598

Investigator ID #: 1113 12682

Extension Date:

Date Retd to Offender: MAY 26 2021

Offender Name: Kenneth Taylor TDCJ # 328757

Unit: Jester III Housing Assignment: 1-11 ✓

Unit where incident occurred: Jester III

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? Please see Below When? Please see Below

What was their response? None

What action was taken? None

State your grievance in the space provided. Please state who, what, when, where and the disciplinary case number if appropriate

I have wrote letters to the following people addressing this issue: Kenneth Mc Putnum Jr, Warden Jester III; Maricia Jackson, Director TDCJ region III; Bryan Collier, Executive Director TDCJ; Kim Massey Director TDCJ State Classification; John Whitmire, Texas Senator; James White, Texas Representative; and Governor Greg Abbott. The last of these letters were sent "Legal" U.S. Mail on April 10, 2021.

I'm a heat sensitive inmate, with a heat score; heat restricted and have underlining health conditions. These medical condition classify me as a disabled person under "ADA". This disability requires air-condition housing for which I do not have and TDCJ refuses to house me in at Jester III unit. This issue has been on going and resulted in legal action in CAVITT^{et al} VS-DAVIS^{et al} Civil Action No. 4:19-cv-02881. In this case TDCJ's attorney of record told the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION: "that 'all' heat sensitive inmates would be in air-condition housing by 2021." They also told this same court "these measures are appropriate within the correctional context and effective to reasonably accommodate the named Plaintiffs." Furthermore they also told this court "a more appropriate tailored remedy would be to accommodate the plaintiffs, rather than the entire Jester III unit." <see defendants Motion to dismiss and Summary Judgment, dated Feb. 10, 2020> "I am ONE OF THOSE PLAINTIFF" and have not been accommodated! Now, its the start of the 2021 Heat Season in TDCJ and I'm still not in air-condition housing as TDCJ's attorney told the court I would be as a heat sensitive inmate and a plaintiff in that legal action.

I-127 Front (Revised 11-2010)

YOUR SIGNATURE IS REQUIRED ON BACK OF THIS FORM

(OVER)

This deception has prompted this action and is close to a very soon filing of additional legal action. Please take Note: I was assigned to the Pack Unit in Navasota, from August 2014-2017, but move at the request of UTMB Galveston to be as close to Hospital Galveston due to my High risk of Stroke.

This being the case TDCJ Has defrauded the courts and have placed me in additional danger of my Health & safety.

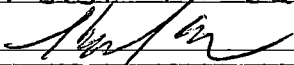
C.C. File

C.C. File All listed above

C.C. U.S. District Court, Regional Grievance & Main Grievance Huntsville

Action Requested to resolve your Complaint.

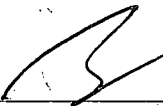
To be moved into Air-condition housing at Jester III or Carol Young the two closest A/C equipped units to Hospital Galveston

Offender Signature: 

Date: April 18 2021

Grievance Response:

Your grievance was investigated and disclosed you are housed appropriately per SCC. There is not an A/C bed to accommodate the inmate's medical needs at this time. Heat Score Review 03/05/21. No further action warranted.

Signature Authority:  BRUCE FREDERICK, ASST WARDEN 5/25/21

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: *Resubmit this form when the corrections are made.

- ☐ 1. Grievable time period has expired.
- ☐ 2. Submission in excess of 1 every 7 days. *
- ☐ 3. Originals not submitted. *
- ☐ 4. Inappropriate/Excessive attachments. *
- ☐ 5. No documented attempt at informal resolution. *
- ☐ 6. No requested relief is stated. *
- ☐ 7. Malicious use of vulgar, indecent, or physically threatening language. *
- ☐ 8. The issue presented is not grievable.
- ☐ 9. Redundant, Refer to grievance # _____
- ☐ 10. Illegible/Incomprehensible. *
- ☐ 11. Inappropriate. *

UGI Printed Name/Signature: _____

Application of the screening criteria for this grievance is not expected to adversely affect the offender's health.

Medical Signature Authority: _____

OFFICE USE ONLY

Initial Submission UGI Initials: _____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____

2nd Submission UGI Initials: _____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____

3rd Submission UGI Initials: _____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____

January 06, 2022

Kenneth Taylor, 828757

Jester III Unit

3- Jester Rd.

Richmond, Texas

77406

UNITED STATES DISTRICT Court

Att: Clerk

P.O. Box 61010

Houston, Texas

77406

RE: TAYLOR V. COLLIER, et al Civil Action No 4:21-cv-02161

Dear Clerk,

Enclosed you will find a Motion For Summary Judgment and Memorandum in support to be filed in your Court.

A copy of this was sent by U.S. Mail to the defendants Counsel of record, The Texas Attorney Generals office.

Respectfully



Remedy 107101, 828757
3- Jester Rd
3- Jester Rd
Richmond, Texas
77406

United States Courts
Southern District of Texas
FILED

JAN 10 2022

Nathan Ochanor, Clerk of Court

United States District
Att: Clerk
P.O. Box 6100
Houston, Texas
77208